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**REMARKS**

Claims 1-23 are currently pending in the subject application and are presently under consideration. Claims 1-10, 12-14, 16, 17, 19-23 have been amended as shown on pp. 2-5 of the Reply. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

**I. Rejection of Claims 6 and 17 Under 35 U.S.C. §112**

Claims 6 and 17 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants' regards as the invention. Claims 6 and 17 have been amended to cure certain informalities and, in light of these amendments, it is respectfully requested that this rejection be withdrawn.

**II. Rejection of Claims 1-6 and 10-20 Under 35 U.S.C. §101**

Claims 1-6 and 10-20 stand rejected under 35 U.S.C. §101 because the claims are not "within the technological arts". It is respectfully requested that this rejection be withdrawn for at least the following reasons. There is currently no judicially recognized separate "technological arts" test to determine patent eligible subject matter under § 101. *Ex Parte Lundgren* (BPAI 2004). Thus, this rejection is not a valid or recognized rejection.

Furthermore, claims 1-6 and 10-20 produce a useful, concrete and tangible result.

Because the claimed process applies the Boolean principle [abstract idea] *to produce a useful, concrete, tangible result* ... on its face the claimed process comfortably falls within the scope of §101. *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358. (Fed. Cir. 1999) (Emphasis added); *See State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601 (Fed.Cir.1998). The inquiry into patentability requires an examination of the contested claims to see if the claimed subject matter, as a whole, is a disembodied mathematical concept representing nothing more than a "law of nature" or an "abstract idea," or if the mathematical concept has been *reduced to some practical application rendering it "useful."* *AT&T* at 1357

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citing *In re Alappat*, 33 F.3d 1526, 31 1544, 31 U.S.P.Q.2D (BNA) 1545, 1557 (Fed. Cir. 1994) (emphasis added).

In the subject Office Action, it is contended that the invention recited in claims 1-6 and 10-20 is a trivial recitation of technology. Applicants' representative disagrees and submits that the Examiner is misconstruing the requirements necessary to fulfill the conditions for patentability under 35 U.S.C. §101. According to *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999), the standard set forth by the Federal Circuit for determining whether claims are directed towards statutory subject matter is whether the claims as a whole can be applied in a practical application to produce a useful, concrete and tangible result. It is the result of the claims as applied in a practical application that is germane to the determination of whether the claims are directed towards statutory subject matter. Applicants' representative contends that the subject claims clearly satisfy the legal standard. In particular, independent claim 1 (and similarly independent claim 20) recites a system providing automatic generation and retrieval of consumer information *comprising an interactive component to motivate consumers to provide information input an analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics*. Thus, the subject claims elicit a series of independent acts that culminate in a useful, concrete, and tangible result – meaningful consumer data captured by a dynamic and responsive consumer information system. Accordingly, withdrawal of this rejection is respectfully requested.

### **III. Rejection of Claim 22 Under 35 U.S.C. §101**

Claim 22 stands rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Withdrawal of this rejection is requested for at least the following reasons. Claim 22 produces a useful, concrete and tangible result.

Because the claimed process applies the Boolean principle [abstract idea] *to produce a useful, concrete, tangible result* ... on its face the claimed process comfortably falls within the scope of

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§101. *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358. (Fed. Cir. 1999) (Emphasis added); *See State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601 (Fed.Cir.1998). The inquiry into patentability requires an examination of the contested claims to see if the claimed subject matter, as a whole, is a disembodied mathematical concept representing nothing more than a "law of nature" or an "abstract idea," or if the mathematical concept has been *reduced to some practical application rendering it "useful."* *AT&T* at 1357 citing *In re Alappat*, 33 F.3d 1526, 31 USPQ2d 1544, 31 U.S.P.Q.2D (BNA) 1545, 1557 (Fed. Cir. 1994) (emphasis added).

In the subject Office Action, it is contended, without additional rationale for rejecting the subject claim, that the claim is merely programming instructions or merely data. Applicants' representative contends that a conclusory assertion without more does not meet the sufficiency of the Examiner's burden with respect to this rejection, and thus it is submitted, the Examiner has failed to set forth *prima facie* grounds to substantiate the rejection under 35 U.S.C. §101 with respect to this claim.

Further, according to *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999), the legal standard set forth by the Federal circuit for determining whether claims are directed towards statutory subject matter is whether the claims can be applied in a practical application to produce a useful, concrete and tangible result. The subject claim clearly meets the aforementioned legal standard. Independent claim 22 recites *a data packet adapted to be transmitted between at least two processes comprising an interactive component to motivate consumers to provide information input and an analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics.* Thus, claim 22 recites independent acts (transmitting a data packet comprising between at least two computer processes) that facilitate the providing of information from a consumer by dynamically providing feedback to an interactive component based on consumer information. Such independent acts produce a concrete, tangible and useful result – namely, the transmission of meaningful consumer data captured by a dynamic and responsive consumer information system.

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Additionally, the Court of Appeals for the Federal Circuit stated in *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325 (Fed. Cir. 2005):

Title 35, section 101, explains that an invention includes "any new and useful process, machine, manufacture or composition of matter." ... Without question, *software code alone qualifies as an invention eligible for patenting under these categories*, at least as processes. *Id.* at 1338 (emphasis added).

The subject claim clearly pertains to software code comprising *an interactive component to motivate consumers to provide information input and an analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics* encapsulated in a data packet transmitted from one computer process to another computer process, so that components therein can be employed to facilitate the dynamic and responsive gathering of consumer information. The fact that (i) the data packet that encases the software code during its transmission between two processes, or (ii) the data packet is transmitted as a communication signal between two processes is irrelevant to the fact that it is software code that is contained therein and is being transmitted through utilization of a communication signal. It is submitted that all that is relevant is the fact that software code is being transmitted within the data packet, and that the software code so transmitted produces a useful, concrete and tangible result.

In view of at least the foregoing, it readily apparent that the subject claim sets forth a useful, concrete and tangible result. Accordingly, withdrawal of this rejection is requested.

#### **IV. Rejection of Claim 23 Under 35 U.S.C. §101**

Claim 23 stands rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Claim 23 produces a useful, concrete and tangible result.

The subject Office Action states that claim 23 is merely data without providing a

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rationale for the rejection under 35 U.S.C. §101. In the Office Action, the Examiner has clearly failed to set forth a *prima facie* case to substantiate the rejection of independent claim 23, and as a consequence has failed to satisfy the sufficiency of his burden in this regard. Further, independent claim 23 recites *a computer readable medium having stored thereon a data structure*, this alone provides ample substantiation to characterize the data structure as being “functional descriptive material” recorded on computer readable media such that the data structure becomes structurally and functionally interrelated with the media and thus statutory for the purposes of 35 U.S.C. §101. See MPEP §2106(IV)(B)(1). Moreover, the subject claim provides that the data structure is not only stored on the computer readable media but is also utilized to load configurable data elements into a software program – a useful, concrete and tangible result – therefore satisfying the legal requirement set forth by the Federal Circuit in *AT&T Corp. v. Excel Communications, Inc.*

In view of at least the foregoing, it is apparent that applicants’ claimed invention produces a useful, concrete and tangible result pursuant to *AT&T Corp. v. Excel Communications, Inc.* Accordingly, this rejection should be withdrawn with respect to independent claims 23 and claims that depend there from.

**V. Rejection of Claims 1-23 Under 35 U.S.C. §102(e)**

Claims 1-23 stand rejected under 35 U.S.C. §102(e) as being anticipated by Nanos (U.S. Patent No. 6,381,744). It is respectfully submitted that this rejection should be withdrawn for at least the following reason. Nanos does not disclose, teach or suggest each and every limitation of the subject claimed invention.

A single prior art reference anticipates a patent claim only if it *expressly or inherently describes each and every limitation set forth in the patent claim*. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); See *Verdegaal Bros. v. Unlon Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The *identical invention must be shown in as complete detail as is contained in the ... claim*. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

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The subject invention relates to a system and methodology for obtaining insights into the minds of consumers in order that research, such as marketing, can be conducted in a cost-effective and time-efficient manner. In particular, independent claim 1 (and similarly independent claims 12 and 20-23) recites *a system providing automatic generation and retrieval of consumer information comprising an interactive component to motivate consumers to provide information input and an analytical component that determines demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics*. Nanos fails to disclose, teach or suggest such novel aspects of the claimed invention.

In the subject Office Action, it is contended that Nanos teaches determining *demographics of consumers based on the information input and provides feedback to the interactive component based upon profiles associated with the information input and demographics* through a language selection menu. Applicants' representative respectfully disagrees with such contentions. Nanos discloses a user selecting a language corresponding to the user's natural spoken language from a pre-supplied list of available languages. (See Abstract). This is distinct from the determination of consumer demographics such as age, wealth and gender. In the claimed invention, an analytical component discovers the demographic of the consumer based upon the information provided by the consumer. For example, after several responses, the analytical component may determine the information provider is a female, below the age of 30, and single. Accordingly, later questions or prompts will be tailored to single females below the age of 30. (See pg. 8, ln. 13 to pg. 9, ln. 6). Thus, while Nanos teaches the selection from a list of provided languages; it nowhere discloses the adaptation of the requests to the demographic determined from previous responses of the information provider. Therefore, Nanos fails to teach, suggest, or disclose each and every limitation set forth in the subject claims.

In view of at least the foregoing, it is respectfully submitted that Nanos fails to disclose, teach or suggest each and every limitation of applicants' invention as recited in the subject claims. Accordingly, it is respectfully submitted that Nanos does not

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anticipate the applicants' claimed invention and therefore it is requested that this rejection be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [IGPP101USA].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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